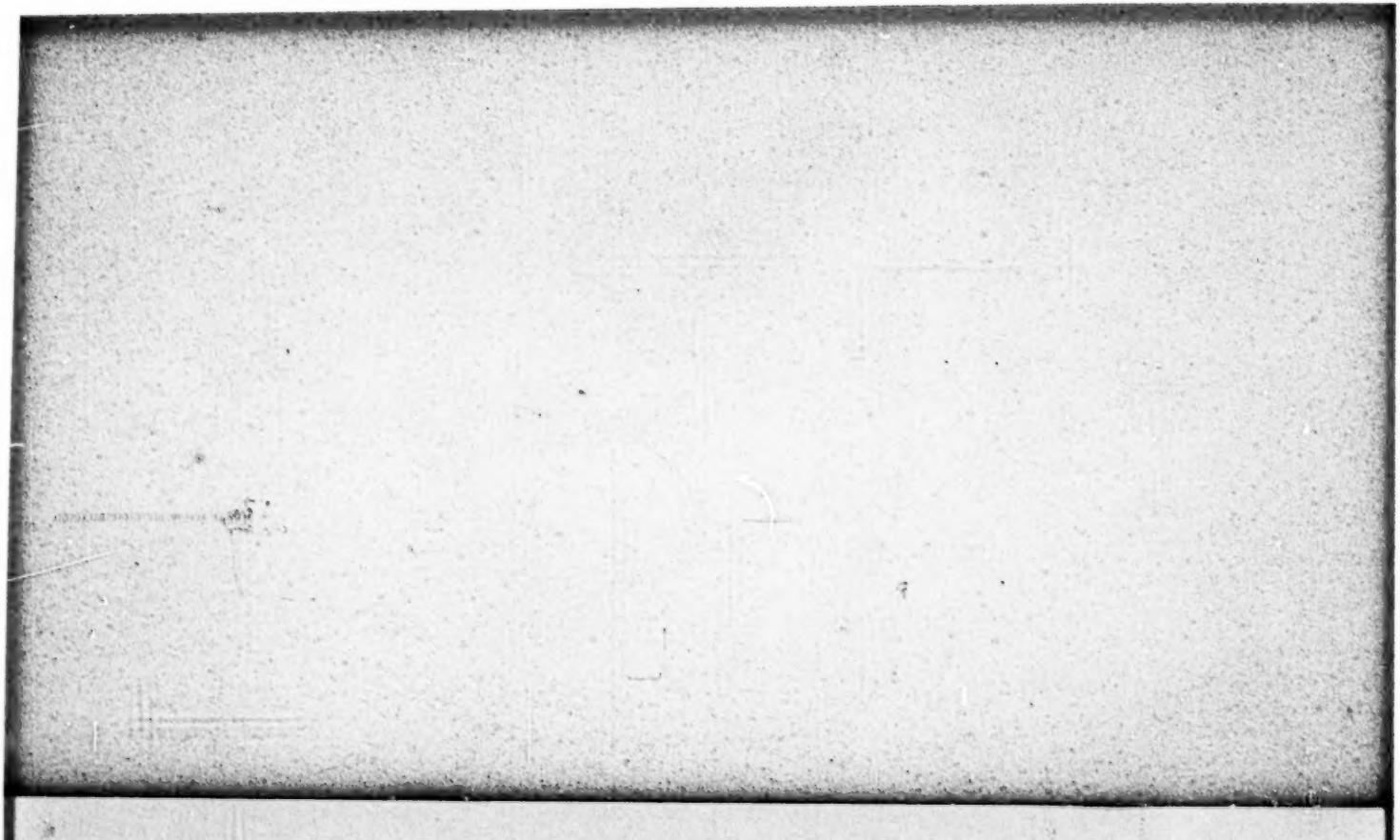

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

NO. 74-417

HEIRS OF HUBERT BURAT (BURAS)

Petitioners

versus

BOARD OF LEVEE COMMISSIONERS OF THE ORLEANS LEVEE DISTRICT OF THE STATE OF LOUISIANA, ET AL

Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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Respondents

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BRIEF IN OPPOSITION

QUESTION PRESENTED

Whether the District Court has jurisdiction under 28 U. S. Code §1331 of this non-diversity action asserting title to certain land in Plaquemines Parish, Louisiana in the possession of the respondents.

STATEMENT OF THE CASE

As in the Courts below, petitioners' "Statement of the Case" bears little resemblance to the complaint (See Appendix). Nevertheless, the District Court and the

Court of Appeals generously considered every contention made by the petitioners in oral arguments and briefs, though in large measure based on fresh folklore, in search of a possible ground for federal question jurisdiction under 28 U. S. Code §1331. None was found.

The complaint was filed by the "Heirs of Hubert Burat (Buras)", not otherwise named, as a class action for declaratory judgment, money damages and injunctive relief. The complaint seeks to establish title based upon a confirmation by Act of Congress and subsequent patent, to described lands in Plaquemines Parish, Louisiana; a money judgment against the Orleans Levee Board and nine other respondents for $100,000,000 as bad faith possessors of the lands, and to enjoin the respondents from possessing the lands. The complaint alleges that jurisdiction is based upon "28 U. S. C. A. §1331 et seq."

Each of the respondents filed a motion to dismiss for lack of jurisdiction.[1] Judgment was rendered by the District Court on April 24, 1974, granting the motion. The Court of Appeals affirmed the District Court by judgment entered July 15, 1974, rehearing denied on August 12, 1974.

ARGUMENT

This case is an ejectment action (Louisiana petitory action) by parties out of possession for over 100 years, against parties who the complaint alleges have long been in possession. Petitioners allege title under a claim confirmed by Act of Congress in 1842 and a patent therefor which finally issued in 1972.

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[1] Certain respondents also filed motions for summary judgment or other pleadings claiming no interest in the litigation.

The arguments made by petitioners in the District Court in support of federal jurisdiction were:

a) The federal laws and patent under which their claim of title arose—this does not present a federal question.[2]

b) That the respondents' title is defective for various reasons—a matter in anticipation of respondents' supposed defenses, which, under the well pleaded complaint rule, petitioners may not urge for jurisdiction purposes in an ejectment action.[3]

The arguments made by the petitioners in the Court of Appeals and here are the same, except, in the face of the long, unbroken jurisprudence contrary to the arguments, their emphasis is now placed almost entirely on *Oneida Indian Nation v. Oneida County*, 414 U.S. 661, 39 L. Ed. 2d 73, 94 S Ct. 772 (1974), which was decided shortly before the hearing in the Court of Appeals and was briefed and argued before that Court.

But *Oneida* is very careful to affirm the long line of cases which hold that a federal question is not presented on the allegation that ownership or possession is claimed under a United States patent or Act of Congress, and it

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[2] *Shultis v. McDougal*, 225 U.S. 561, 570, 56 L. Ed. 1205, 32 S Ct. 704 (1912); *Florida Central & Peninsular R. Co. v. Bell*, 176 U.S. 321, 328-329, 44 L. Ed. 486, 20 S Ct. 399 (1900); *Joy v. City of St. Louis*, 201 U.S. 332, 341-342, 50 L. Ed. 776, 26 S Ct. 478 (1906); *Oneida Indian Nation v. Oneida County*, infra.

[3] Taylor v. Anderson, 234 U.S. 74, 58 L. Ed. 1218, 34 S Ct. 724 (1914); Gold-Washing & Water Co. v. Keyes, 96 U.S. 199, 24 L. Ed. 656 (1877); *Florida Central & Peninsula R. Co. v. Bell*, 176 U.S. 321, 44 L. Ed. 486, 20 S Ct. 399 (1900); *Filhiol v. Maurice*, 185 U.S. 108, 46 L. Ed. 827, 22 S Ct. 560 (1902); *Filhiol v. Torney*, 194 U.S. 356, 48 L. Ed. 1014, 24 S Ct. 698 (1904); *Joy v. City of St. Louis*, 201 U.S. 332, 50 L. Ed. 776, 26 S Ct. 478 (1906); *White v. Sparkill Realty Corp.* 280 U.S. 500, 74 L. Ed. 578, 50 S Ct. 186 (1930); *California Powder Works v. Davis*, 151 U.S. 389, 38 L. Ed. 206, 14 S Ct. 350 (1894); *Oneida Indian Nation v. Oneida County*, infra.

specifically does not disturb "the well pleaded complaint rule".

Petitioners' claim of title and right to possession is the same as thousands whose claims were confirmed by Act of Congress after the Louisiana Purchase. Land title and possessory actions are not normally the business of federal courts and there is nothing unusual in this case to make it so. There is not a remote analogy to *Oneida*, which is unique in that it is applicable only to suits involving Indian tribes; nor is there any conflict with another court of appeals; nor has an important state or territorial question been decided; nor has a federal law or federal question been decided which has not already been similarly decided by this Court time and again, and thus there has been no departure from the accepted and usual course of judicial proceedings, and, all considered, no reason to grant certiorari.

CONCLUSION

For the reasons stated, the Petition should be denied.

Respectfully submitted,

Lawrence K. Benson
1100 Whitney Building
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Attorney for The Board of Commissioners of the Orleans Levee Board of the State of Louisiana, Chevron Pipeline Company and Chevron Oil Company, and on behalf of the other Respondents

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Brief in Opposition have been served by depositing three copies of the same in the United States mail, with first class postage prepaid, addressed to each counsel of record for petitioners at their respective post office addresses shown on their Petition.

November , 1974.

Lawrence K. Benson

APPENDIX

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

Civil Action No. 72-1798 Section E

HEIRS OF HUBERT BURAT (BURAS),
Plaintiff

versus

BOARD OF LEVEE COMMISSIONERS OF THE ORLEANS LEVEE DISTRICT OF THE STATE OF LOUISIANA, LOUISIANA WILDLIFE AND FISHERIES COMMISSION; GULF REFINING COMPANY; STANDARD OIL OF CALIFORNIA; SHELL OIL COMPANY; ESTATE OF WILLIAM G. HELIS, his heirs and assigns; LOUISIANA POWER & LIGHT COMPANY (formerly known as PEOPLES UTILITIES, INC.); PHILIP A. GROVE,
Defendants

COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF AND MONEY DAMAGES

1.

Jurisdiction is based upon 28 U.S.C. 1331 et seq., and the amount in controversy exceeds TEN THOUSAND AND NO/100 ($10,000.00) DOLLARS exclusive of interest and costs.

2.

Plaintiffs bring this action as a class, and appropriately request that the court grant an order permitting same on the grounds that:

(a) The class consists of the approximately 550 heirs of HUBERT BURAT (BURAS), and accordingly the class is so numerous that joinder of all members is impracticable;

(b) There are questions of law and/or fact common to all members of the class;

(c) The claims or defenses of the representative parties are typical of the claims or defenses of the class, and;

(d) The representative parties will fairly and adequately protect the interests of the class.

3.

The following parties are made defendants herein, and each is jointly and in solido liable justly and truly unto each and every heir of Hubert Burat (Buras) as a class in the full sum of ONE HUNDRED MILLION AND NO/100 ($100,000,000.00) DOLLARS, together with legal interest from date of judicial demand until paid and all cost of these proceedings:

(a) The Board of Levee Commissioners of the Orleans Levee District of the State of Louisiana, being a duly authorized and constitutionally formed governmental agency for the State of Louisiana, (hereinafter called the Levee Board);

(b) The Louisiana Wildlife and Fisheries Commission being a duly authorized and constitutionally formed governmental agency of the State of Louisiana;

(c) The Gulf Refining Company, a corporation being a corporate citizen of the State of Delaware, but authorized to do and doing business in the State of Louisiana;

(d) The Standard Oil Company of California, a corporation being a corporate citizen of the State of California, but authorized to do and doing business in the State of Louisiana;

(e) The Shell Oil Company, a corporation being a corporate citizen of the State of Delaware, but authorized to do and doing business in the State of Louisiana;

(f) The Chevron Oil Company, a subsidiary of the Standard Oil Company of California, being a corporate citizen of the State of California, but authorized to do and doing business in the State of Louisiana;

(g) Cal-Ky Pipeline Company, a subsidiary of the Standard Oil Company of California, being a corporate citizen of the State of California, but authorized to do and doing business in the State of Louisiana;

(h) Estate of William G. Helis, his heirs and assigns, doing business as Helis Enterprises, Inc., a corporate citizen of the State of Dela-

ware, but authorized to do and doing business in the State of Louisiana;

(i) The Louisiana Power & Light Company, formerly known as Peoples Utilities, Inc., a domestic corporation with its principal place of business in the State of Louisiana;

(j) Philip A. Grove, a citizen of the State of Louisiana.

FIRST CAUSE OF ACTION

4.

This is an action for a declaratory judgment pursuant to 28 U.S.C. Sec. 2201 for the purpose of determining a question of actual controversy between the partiees as hereinafter more fully appears.

5.

For all acts complained of herein, the subject property is known as St. Helena Meridian, Louisiana, T. 19S., R. 16E., all of Sections 29, 30, 31, and 32 inclusive, being 707.46 acres according to the plat of survey approved October 24, 1854, on file with the Bureau of Land Management, United States Government, Department of the Interior.

6.

Hubert Burat, also known as Hubert Buras (hereinafter referred to as Hubert Burat (Buras), commenced actual physical possession of the aforesaid lands on or about the year of 1795.

7.

On or about November 22nd, 1837, Hubert Burat (Buras) commenced his application for a United States Land Patent by a formal written and acknowledged claim to the office of the Register and Receiver of the Land Office for the Southern Eastern District of Louisiana at New Orleans, said claim being, and also known as, Claim #60.

8.

The Congress of the United States by Section Three (3) of the Act of July 6th, 1841 (5 Stat. 491) confirmed the aforesaid Claim #60.

9.

From the Louisiana Purchase until May 24th, 1972, the United States of America was the only lawful record owner of the aforesaid properties,

10.

During the period of 1924 through 1930, the Levee Board in violation of the Constitution of the United States of America, and by acts exceeding its own authority specifically granted to it by the State of Louisiana, and by various acts of expropriation, wrongfully and illegally seized, sequestered, and otherwise wrongfully assumed ownership of the aforesaid lands being the exclusive property of the United States of America.

11.

On May 24th, 1972, the United States of America issued the previously applied for Land Patent to the heirs of Hubert Burat (Buras), the class plaintiffs herein; said Patent bearing No. 1242435, a copy of which is attached hereto and marked as "Exhibit A".

SECOND CAUSE OF ACTION

12.

Subsequent to the previously described wrongful acts of expropriation by the Levee Board, the following persons and/or parties have gained bad faith possession and access onto the aforesaid property and land:

(a) Board of Levee Commissioners of the Levee District of the State of Louisiana;

(b) Louisiana Wildlife and Fisheries Commission;

(c) Gulf Refining Company;

(d) Standard Oil Company of California;

(e) Shell Oil Company;

(f) Chevron Oil Company;

(g) Cal-Ky Pipeline Company;

(h) Estate of William G. Helis;

(i) Helis Enterprises, Inc.;

(j) Louisiana Power & Light Company;

(k) Philip A. Grove.

(hereinafter all of which and all of whom being called the bad faith possessors).

13.

The bad faith possessors have installed various artifacts of no use to the plaintiffs, all against and without

their consent. Additionally, the aforesaid property has been viciously destroyed and/or obliterated with canals, pieplines, large metal tanks, and other such heinous structures; all of which has caused ONE HUNDRED MILLION AND NO/100 ($100,000,000.00) DOLLARS in damages to the plaintiffs.

THIRD CAUSE OF ACTION

14.

Plaintiffs reasonably fear and believe that any, each and every one of the bad faith possessors are in present intent of further altering, destroying and/or otherwise disposing of the aforesaid property in the proximate future, and indeed, that such actions are being negotiated and planned for presently, and accordingly pray that the Court timely grant, after declaring the rights of the plaintiffs as given them by the United States of America, and the money damages demanded above, a preliminary injunction and ultimately a permanent injunction ordering the bad faith possessors to cease and desist actual and implied possession of the aforesaid property.

WHEREFORE, plaintiffs pray for and demand as a class that after due proceedings had, the Court adjudge, declare, render and decree:

1. That the Act and/or Acts of Expropriation by the Board of Levee Commissioners of the Orleans Levee District of the State of Louisiana against all of Sections 29, 30, 31, 32, inclusive, of Township 19 South, Range 16 East, St. Helena Meridian, Louisiana, be declared null, void, in violation of the Constitution of the United States of America, and otherwise of no lawful effect as having been an unconstitutional act of seizure by a State

Sovereign against the Federal Sovereign, without due process of law.

2. That all persons comprising that class of persons known as the heirs of Hubert Burat (Buras) received good, full and perfect title to the aforesaid lands from the United States of America on May 24, 1972 with retroactive effective to July 6, 1842.

3. That defendants, Board of Levee Commissioners of the Levee District of the State of Louisiana; Louisiana Wildlife and Fisheries Commission; Gulf Refining Company; Standard Oil Company of California; Shell Oil Company; Chevron Oil Company; Cal-Ky Pipeline Company; Estate of William G. Helis, his heirs and assigns; Helis Enterprises, Inc.; Louisiana Power & Light Company, (formerly known as Peoples Utilities, Inc.); Philip A. Grove, be condemned to pay unto the plaintiffs as a class by judgment rendering them liable jointly and in solido, the full sum of ONE HUNDRED MILLION AND NO/100 ($100,000,000.00) DOLLARS, together with legal interest from date of judicial demand until paid, and for all costs.

4. That there be issued a permanent injunction ordering the defendants, Board of Levee Commissioners of the Levee District of the State of Louisiana; Louisiana Wildlife and Fisheries Commission; Gulf Refining Company; Standard Oil Company of California; Shell Oil Company; Chevron Oil Company; Cal-Ky Pipeline Company; Estate of William G. Helis, his heirs and assigns; Helis Enterprises, Inc.; Louisiana Power & Light Company, (formerly known as Peoples Utilities, Inc.); Philip A. Grove, or any heir, successor or assign of each, and any other person to cease and desist possession of the

aforesaid property without the express consent of the heirs and assigns of Hubert Burat (Buras).

5. That the remedies prayed for and sought herein be granted by summary proceedings where available and applicable, and that, all of the defendants herein be duly cited to appear as necessary parties to said proceedings.

6. And all other general and equitable relief.

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ROSS P. LA DART
Curator Ad Hoc for Absent Heirs
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Building 8—Suite 4
Harvey, Louisiana 70058 347-6241

PLAINTIFFS "EXHIBIT A"

Form 1860–8
(January 1965)
(formerly 4–1040)
Eastern States 10704

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, There is now deposited in the Bureau of Land Management, evidence whereby it appears that the Private Land Claim of Hubert Burat (Buras), being Claim No. 60 of the Report of the Register and Receiver dated November 22, 1837 for land claims in Plaquemines Parish, was confirmed by Section 3 of the Act of July 6, 1842 (5 Stat. 491), and that the said claim has been regularly surveyed and described as follows:

St. Helena Meridian, Louisiana.
T. 19 S., R. 16 E.,
Sec. 29, All;
Sec. 30, All;
Sec. 31, All;
Sec. 32, All.

T. 19 S., R. 16 E.,
Sec. 29, All;
Sec. 30, All;
Sec. 31, All;
Sec. 32, All.

The area described contains 707.46 acres, according to the plat of survey approved October 24, 1854 and the particular plat of the claim approved October 24, 1885, on file in the Bureau of Land Management:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the premises, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT unto the said Hubert Burat (Buras), and to his heirs, the land above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said Hubert Burat (Buras), and to his heirs and assigns forever.

This patent shall only operate as a relinquishment of title on the part of the United States, and shall in no manner interfere with any valid adverse right to the same land, nor be construed to preclude a legal investigation and decision by the proper judicial tribunal between adverse claimants to the same land.

IN TESTIMONY WHEREOF, the undersigned authorized officer of the Bureau of Land Management, in accordance with the provisions of the Act of June 17, 1948 (62 Stat. 476), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.

GIVEN under my hand, in Silver Spring, Maryland the TWENTY-FOURTH day of MAY in the year of our Lord one thousand nine hundred and SEVENTY-TWO and of the Independence of the United States the one hundred and NINETY-SIXTH.

[SEAL]

By Doris A. Kinsella
Manager, Eastern States Land Office

Patent Number 1242435